

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

KATHERINE T.

Claimant,

OAH No. N2003100629

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

**DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Napa, California, on December 6, 7 and 8, 2005, and January 12 and 13, 2006.

Thomas E. Beltran, Attorney at Law, represented Claimant Katherine T.,<sup>1</sup> who was not present. Claimant's mother and father, who are also her conservators, were present.

Nancy Ryan, Attorney at Law, represented the North Bay Regional Center (NBRC). Rhonda Vought, Client Program Coordinator with NBRC, was present.

Submission of the matter for decision was delayed as the Parties wished to submit written closing statements. The statements were timely received and made part of the administrative record.<sup>2</sup>

The record closed on March 1, 2006.

---

<sup>1</sup> Initials are used to protect privacy.

<sup>2</sup> Claimant's Closing Brief, Exhibit I; NBRC's Closing Brief, Exhibit II; and Claimant's Reply Brief, Exhibit III.

## PROCEDURAL HISTORY

1. Claimant Katherine T. filed timely requests for fair hearings following NBRC's issuance of two separate Notices of Proposed Action. The first Notice, dated October 14, 2003, denied Claimant's request "to fund IABA<sup>3</sup> for supported living services." The notice also "proposes re-evaluation of the \$4,800 monthly amount currently being spent under a 'self-determination' program for [Claimant]." As reason for the action, the notice states: "This was not developed through the planning team process; this is not the least restrictive environment for [Claimant]; NBRC has not had the opportunity to fully and fairly evaluate [Claimant's] true needs; This would not be a cost effective use of public funds." (Sic.)

The second Notice is dated December 30, 2003. It states that NBRC will discontinue funding the self-determination program because: "Due to lack of contact with the consumer, NBRC has been unable to evaluate the Consumer's program plans; to continue to pay would not be a cost effective use of public funds."

3. The two appeals were consolidated and hearing dates were noticed. The Parties, however, requested numerous continuances in order to attempt to reach agreement. During the intervening two-year period, more information was gathered and provided about Claimant and about the availability and suitability of supported living plans and services other than the IABA plan. Nonetheless, agreement could not be reached and the matter proceeded to hearing.

4. The reasons for denial in the Notices of Action contain references to alleged lack of contact with the consumer and lack of opportunity to evaluate her needs. Based upon the evidence presented and arguments made by NBRC, it appears that these reasons are no longer being advanced. Instead, NBRC bases the denial of the requested IABA program upon the duty to spend public funds in a cost-effective manner and to comply with a specific regulation concerning maximum costs payable for supported living services. It is also noted that Claimant's general right to receive appropriate supported living services is not in question. The issues to be addressed in this Decision have been framed accordingly.

---

<sup>3</sup> "Institute for Applied Behavior Analysis."

## ISSUES

1. Whether NBRC is required to fund the supported living plan (SLP) proposed for Claimant by IABA
2. Whether NBRC is required to continue to fund Claimant's "self-determination" program in lieu of the IABA plan (or other SLP) or until the IABA plan (or other SLP) is in place.

## FACTUAL FINDINGS

1. Claimant receives regional center services from NBRC due to autism. Born May 27, 1982, she is currently 23 years of age. Claimant resides in the family home in Napa with her parents.
2. Claimant suffers from numerous medical conditions. She has scoliosis and has had spinal fusion surgery and Harrington's rods placed in her back. Habitual toe-walking resulted in misshapen feet. A cyst required the removal of her spleen and, on a separate occasion, a large ovarian cyst was removed. In addition, Claimant suffers from a heart murmur, von Willebrand's disease (a blood clotting disorder) and sleep disorders.
3. Claimant was diagnosed with autism at age eight, and the diagnosis was confirmed when she was a teenager. She is generally described as High Functioning Autistic. Claimant learned to read at an early age, but still struggles with basic arithmetic. Testing for cognitive functioning over the years has been consistent, with verbal IQ results very high and performance IQ results low. This dichotomy helps explain why Claimant can appear in casual encounters to have no disabilities. When functioning at her best, she can be very engaging – chatting about a variety of subjects and showing interest in other people and animals. Claimant has many interests, including music, art and literature. She studies voice, has sung in choirs and has expressed interest in being an actress. Claimant has spoken at conferences on autism.
4. Despite her strengths, Claimant's limitations are vast. She has severe problems relating to others beyond a superficial level. Complex neurological deficits prevent her from, for example, understanding another person's need for personal physical space. She will say inappropriate things at inappropriate times. Beginning in approximately 1997, Claimant's history is replete with self-injurious and high-risk behaviors. She has attempted suicide and intentionally cut herself. She has run away numerous times and been missing for days. During the runaways, she has accepted rides from strangers and been raped. She has also solicited men for sex right after meeting them.
5. Claimant received special education services throughout her school career. Middle school was difficult despite the assistance of a 1:1 aide. Claimant's high school

placement in a “continuation school” environment was problematic. Her parents, psychologist and regional center staff continuously sought services and placements for Claimant. Despite these efforts, Claimant’s struggles, especially to “fit in” and form acceptable relationships with others, continued.

6. During the summer of 1996, between seventh and eighth grades, Claimant was molested on an airplane. Her problems intensified, and she began seeing Maureen O’Shea, a clinical psychologist. In Dr. O’Shea’s opinion, the molestation acutely traumatized Claimant, who subsequently became fixated with the idea of being a prostitute and “living on the streets.” Dr. O’Shea has treated Claimant since 1996, and her descriptions of Claimant are very instructive. A report she wrote on March 27, 2005, includes the following observations:

[Claimant’s] very severe neurodevelopment problems are not obvious. . . Her primary problem is severe deficits in being able to cope with the practical and social aspects of life. Getting along with other people and adapting to social situations are pervasive demands on all of us. Being part of a family, developing and maintaining a friendship, applying for and holding a job, attending school, shopping at stores, taking public transportation, even going to theatrical performances require high levels of integration of sensory and cognitive information. These are ordinary, everyday events, but they are among the most complex things we do. Without really trying, our brains put together sensations, make associations and form the “big picture” of our environment and how we should respond. [Claimant] is not able to do this very well. She gets stuck in a detail or a narrow slice of information. Her obsessive interests, problems in reading people and recognizing who is a “safe” companion, extreme suggestibility, problems in knowing her internal state, impaired ability for reciprocal relationships, difficulties in solving multi-step problems, inability to find a job, her regular threats to stop her medications, her unrealistic expectations about living independently and occasionally becoming convinced that a particular kind of experience will “cure” her, such as exorcism, are all related to her “big picture” disability.

Throughout [Claimant’s] life she has had problems in regulation, beginning with maintaining basic muscle tone and establishing a regular sleep/alert cycle. Sensory processing disruptions were evident from her early childhood. The sounds, sights, touches, and tastes of the world could overwhelm her, and result in severe meltdowns due to a “fight-flight” or panic reaction. [Claimant] continues to have regulation problems, for

example she has a diagnosed sleep disorder. In addition, she is frequently confused, worried or anxious, and is likely to become abruptly angry or verbally abusive due to a skyrocketing level of arousal in response to a very small event. For example, she may have been offended by a word or phrase someone used, or she may have been confused by someone's limited use of facial expression. In this state her "big picture" capacities are almost non-existent.

7. Claimant has been hospitalized twice in psychiatric facilities. Following a runaway in October 1997, during which she was missing for three days, Claimant was admitted to a highly structured program at Ross Hospital. The program was not successful and Claimant was returned home after a few days. After writing a note in blood on a wall and taking a bottle of Excedrin, Claimant was hospitalized again briefly.

Claimant's parents and NBRC representatives undertook an extensive search for an appropriate residential program. UCLA's Neuro-Psychiatric Institute (NPI) was contacted and Dr. Edward Ritvo (who had diagnosed Claimant's autism originally) admitted her for an evaluation. NPI staff concluded that Claimant required stabilization by staff experienced with the high-functioning autistic in a structured setting. Due to cost constraints (NBRC would not fund the stay and Claimant's parents could not afford the \$1,300 per day charge) Claimant was returned home.

8. Claimant ran away again, to South Lake Tahoe, where she was found by authorities and housed in a juvenile detention center. The search for placement continued, but only NPI was found suitable. Although NBRC did not agree to fund the stay, an alternative source was apparently found and Claimant was admitted in January, 1998. Claimant made some progress in this facility, although she did manage two short runaways despite the "locked" nature of the setting.

By August, 1998, Claimant was the only patient on the unit, and her discharge was imminent. The recommendation was placement in a 24-hour residential school and Claimant's school district and NBRC concurred. During this period, Claimant's mother estimates that she located and contacted approximately 400 residential schools searching for an appropriate placement for Claimant. None were suitable or available and Claimant returned home.

9. Gary LaVigna, Ph.D., is a clinical psychologist and Clinical Director of IABA, a clinic based in Los Angeles. Claimant's family first met Dr. LaVigna in 1991 and Claimant's mother had contacted him during her search for placements. In September, 1998 NBRC engaged Dr. LaVigna to conduct an assessment of Claimant. The resulting Assessment and Support Plan is 49 pages. It contains a vast amount of information about Claimant as well as Dr. LaVigna's opinions about how she can best be served, including long-range goals and the structure necessary to keep her physically safe in the community. In addition, the plan contains a specific program of behavior management that utilizes a

system of reinforcements. The plan was adopted and NBRC vendorized Bayberry, Inc., to administer it. Dr. LaVigna twice traveled to Napa to evaluate implementation and to conduct trainings.

10. One segment of the plan provided that Bayberry would provide assistants (commonly called “mentors”) for Claimant. Bayberry was not wholly successful in this regard. On one occasion, a Bayberry staff person and a teacher did not notice Claimant had left the house one afternoon. When they located her and she refused to return with them, they returned to the house and called Claimant’s mother. In the meantime, Claimant was picked up, taken to Vallejo and raped.

Further difficulties were experienced with Bayberry’s services. One mentor reported for work for only 20 days out of a scheduled 64 days. On one occasion, Bayberry advised they would not be able to provide respite for Claimant’s parents due to lack of funding. During one 30-day period, Bayberry provided no services at all.

11. NBRC next offered a solution utilized by other parents of autistic children. NBRC vendored Claimant’s parents to provide services to Claimant, a method they call the “self-determination” model. On March 21, 2001, Claimant’s parents and NBRC staff signed a “Self-Determination Agreement.” It provides that NBRC will pay Claimant’s parents up to \$28,612 for the period of March 20, 2001 to August 31, 2001. In pertinent part, the agreement states:

The objective of these services is to enable [Claimant] to safely participate in the mainstream of community life and to achieve academic goals commensurate with her potential. It is anticipated that this will include high school graduation and attendance at a junior or four year college if she wishes. The long-range goals are independent living, work, and social interaction in the community.

In order to achieve her goals [Claimant] will need comprehensive behavior services, counseling, periodic assessment and intervention by various clinical specialists and structured opportunities to identify and interact with persons with similar disabilities, in particular those who are successfully participating in the mainstream of society. [Claimant’s parents] will select, purchase, and supervise these services within the parameters of the service authorization from [NBRC]. At the beginning of each authorization period [Claimant’s parents] will prepare a service plan and proposed budget and submit it to NBRC. Once mutually agreed upon[,] appropriately trained and licensed persons or agencies will provide these services. Fiscal billing records and receipts will be submitted monthly after

services are provided. NBRC will then reimburse for actual services costs as outlined in this agreement.

12. The exact nature of the services to be paid for is not set forth in the agreement. Individual Program Plan (IPP) documents and addendums identify the services as: “administrative costs, mentors, conferences and meetings, Vine Village [a day program] attendance, camp attendance, and medical appointments.” Subsequent documents extend the authorization time in periodic increments.

This parent-coordinated system is still in place. Currently, Claimant’s parents submit detailed records, prepared by Claimant’s father, of expenditures made each month. NBRC reimburses them up to \$4,800 per month.

13. With the self-determination model in place, Claimant’s mother essentially replaced Bayberry as the administrator of Dr. LaVigna’s plan. She uses Dr. LaVigna’s recommendations, particularly his system of reinforcements, to structure and support Claimant. The majority of the funding goes to pay mentors, hired and trained by Claimant’s mother, to be with Claimant whenever she is not supervised by family members. In addition, the plan pays for therapy with Dr. O’Shea, art classes and supplies, medical and dental bills not covered by Medi-Cal, trips to conferences where Claimant has spoken and other social opportunities for Claimant.

In addition, Claimant’s parents have been reimbursed for restaurant meals and trips to have special coffee, and even cash payments to Claimant that they have used as rewards and reinforcements based upon Dr. LaVigna’s behavioral system. For example, Claimant’s mother has been able to persuade Claimant to go to see a doctor or another appointment that she did not want to go to by going out to lunch or to get coffee afterwards.

14. Despite the fact that Claimant’s placement with her family has been working at least to the extent that she has not run away or engaged in any other destructive behaviors since 2003, Claimant’s goal, developed through the IPP process, since at least that time has been to live independently of her family in a supported living arrangement. One of the tasks that Bayberry was assigned was the formulation of a “Positive Futures Living Plan,” which is a first step towards the preparation of an SLP. When Bayberry failed in this regard, NBRC agreed to fund IABA to prepare the Futures plan. Kathryn Edwards, IABA’s Assistant Director, facilitated the planning meeting and wrote the report, which was completed on January 26, 2003. The Futures plan clearly states Claimant’s goal of moving out of her parents’ home and becoming more independent. Specific goals include living in her own home, working, and taking community college classes.

The next step was to locate a program that could develop and implement an SLP for Claimant based upon the information contained in the Futures plan. Claimant’s parents hoped to have the SLP ready in time for an IPP meeting in October, 2003. When a local Napa program could not be located, Claimant’s mother requested that NBRC fund an SLP by IABA. Rhonda Vought, who had taken over as Claimant’s case manager in April, 2003, was

aware of Claimant's mother's intent. Claimant's parents paid for the IABA SLP initially, but were reimbursed by NBRC.

15. IABA prepared an SLP, dated September 26, 2003, which was faxed to NBRC before the October meeting. On November 3, 2003, IABA issued a revised version that contains more information about safety-related concerns. The IABA plan is thorough and addresses all of Claimant's goals and issues. The report finds that:

[Claimant] does not have the ability to take care of a home independently and her behavioral needs require staff support. This proposal is for 24-hour support in a home of her own with a staff person available for one to one interaction throughout her day. The need for 24-hour support is based on [Claimant's] safety needs due to the lack of independent living skills and the challenges posed by her past lapses of control where she has impulsively run away, putting herself in harmful, potentially life threatening situations.

The SLP provides for Claimant to live in her own one bedroom apartment in Ventura, initially without a roommate. She would, however, be supervised 24 hours a day. At night, this would be provided by paid night staff, trained in behavioral techniques. During the day, trained staff would initially help her transition to her new life and then help her learn basic skills such as money management, budgeting and other independent living skills. A primary focus of the plan is to integrate Claimant into the community by participating in educational and other activities, meeting new people and making friends. There is a community of autistic individuals in the area and Claimant will be introduced to them. Her daytime hours would be spent pursuing her interests in employment and the arts. In addition, her health would be monitored, with appointments scheduled as necessary; emergency services would be in place; and all services would be coordinated. The monthly cost of the program was estimated to be \$15,000.

16. Dr. LaVigna testified about the SLP and about Claimant, generally. His education and experience in the field of behavioral psychology is extensive. Dr. LaVigna has been with IABA over twenty years, serving about 500 clients. IABA works with five regional centers in Southern California and one in Northern California. It provides behavioral consultation services for many clients and also provides direct services. Of the 125 clients it serves in supported living arrangements, at least half are provided 24-hour support and about half are autistic. Dr. LaVigna is clearly an expert in the field of services and supports for autistic individuals.

17. Dr. LaVigna's knowledge about Claimant is extensive. As referenced above, he has known her for many years. He believes that Claimant needs very intensive services, at least at the beginning of her SLP, for three principle reasons. First, Claimant's lack of social skills leaves her very vulnerable to dangerous situations. She needs to be taught to connect socially and to maintain relationships, but to discriminate between safe and unsafe

relationships. Second, she must learn conflict resolution strategies and third, independent living skills.

Dr. LaVigna expressed concern regarding Claimant's current situation. While the strategies he devised that are implemented by Claimant's parents have "kept her safe," she remains in a kind of holding pattern while a suitable program is sought. Claimant is not being challenged in her current environment, meeting peers to help her socialization or learning other skills she needs. Dr. LaVigna expressed surprise that Claimant "has not exploded" while she waits.

18. Should the IABA plan be implemented, Dr. LaVigna is optimistic about Claimant's future, particularly her ability to be more independent and have less need for supervision. He would expect that she can learn to self-regulate and would be "very surprised if she needed more than one year" of the intensive services detailed in the SLP, after which she could live with a self-chosen roommate or without 24-hour support.

19. Concern about Claimant if she does not receive a highly structured program such as the IABA plan was also expressed by Dr. O'Shea (Claimant's therapist). In a letter dated June 9, 2005, she concludes:

Without this kind of intensive intervention, it is likely that [Claimant's] condition will deteriorate into further idiosyncratic thinking and behavior, and her instability will increase. At that point she may again require extensive acute hospitalization.

And Claimant's psychiatrist expressed similar concerns in a letter dated April 5, 2005. Robert L. Hendren, D.O., is a professor of psychiatry and the Executive Director of the M.I.N.D.<sup>4</sup> Institute at the University of California at Davis. He has treated Claimant since February of 2003. In pertinent part, he wrote:

As a result of her disorder, [Claimant] has had a difficult time transitioning into adulthood, learning to live semi-independently and finding suitable work. She needs a structured program, preferably near but away from her parents' home to learn the skills that she needs to become more self-sufficient . . . If she cannot be engaged in such a program I do not expect her to advance significantly and in fact she may regress resulting in a greater burden to her family, the State and to herself.

20. The IABA plan was discussed at an IPP meeting in October, 2003. NBRC staff expressed serious concerns regarding cost, and the request for funding was referred to the NBRC Executive Team for further discussion.

---

<sup>4</sup> "Medical Investigation of Neurodevelopmental Disorders."

21. At a meeting of the NBRC Executive Team funding of the IABA plan was rejected. Douglas Cleveland, Director of Client Services, testified regarding this process. NBRC conducted an analysis utilizing the formula set forth in title 17, California Code of Regulations, section 58617. NBRC staff concluded that “an appropriate licensed residential facility,” was in fact a 4i level facility. Using the cost of such a facility, approximately \$5,200 per month, the Team concluded that an acceptable amount for an SLP was \$5,000 to \$7,000 maximum amount per month.<sup>5</sup> Cleveland noted that, when the team looked at plans for other consumers, the IABA plan “did not seem proportional to others we had helped develop.” At hearing, he presented a list of eleven NBRC consumers whom NBRC supports in supported living arrangements. The cost range for these plans, which he identified as the most expensive NBRC supports, ranged from \$4,119 to \$12,000 per month. Cleveland also stated that the team was “very surprised as we had not been part of the development of the plan and the cost was shocking. It was presented to us as a fait accompli.”

NBRC also decided that the IABA plan did not “constitute a cost effective amount for supported living” and thus violated statutes requiring regional center expenditures to be cost effective. Cleveland described the next step in the process as meeting and determining “what the cost effective amount is and how to accomplish it ... to get reality into the discussion...so all are on the same page as to what the cost effective amount is going to be. That is what is missing in this situation so far.”

22. There is no evidence in the record that meetings to determine a “cost effective amount” were held. Rather, after the IABA plan was rejected, Claimant’s parents filed requests for fair hearing. Nonetheless, both NBRC staff and Claimant’s parents continued to look for an agency that could provide an SLP for Claimant. Claimant’s parents signed consent forms as requested by NBRC, and packets were sent to different vendors. Pursuant to NBRC requests, Claimant met with staff alone; met with staff and one of her mentors; met with a psychiatrist as requested by NBRC; and participated with a provider to create another “Futures” type plan. Claimant’s parents complied with all requests from NBRC, including that they sign consents to release information to three supported living programs prior to the June, 2005 IPP meeting. At the July, 2005, IPP meeting, two Solano County programs were discussed.

After all of this searching, only Royce Howell’s program, Community Connections, emerged as a real possibility. Howell completed an assessment and plan in August, 2005. However, NBRC rejected it for cost reasons. And since that time, Howell has stated that she is not able to provide supported living services for Claimant in any event.

---

<sup>5</sup> Rhonda Vought, Claimant’s current case manager, testified that the “cost effective amount” is \$8,432 per month. This is based upon a 4i level rate of \$5,009 plus day program of \$2,898 and transportation at \$525.

## LEGAL CONCLUSIONS

1. The governing law is found in Welfare and Institutions Code section 4500 et. seq., commonly known as the Lanterman Act. At section 4501, the Legislature declares the State of California's responsibility for persons with developmental disabilities. The Act declares the legislative intent relevant to this matter in several sections, including:

It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning and recreating in the community. (Welf. & Inst. Code, § 4640.7, subd. (a).)

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual . . . with developmental disabilities and takes into account the needs and preferences of the individual . . . as well as promoting community integration, independent productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow . . . adult persons with disabilities to live as independently as possible in the community . . . . (Welf. & Inst. Code, § 4648, subd. (a)(1).)

If any question remained regarding the intent of the legislation, the Supreme Court settled the matter, stating that the purpose of the Act:

. . . is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from

family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 C.3d 384.)

2. The Lanterman Act also provides that regional center consumers have specific rights, including to receive treatment, services and supports in natural community settings (Welf. & Inst. Code § 4502, subd. (b)); to social interaction and participation in community activities (Welf. & Inst. Code, § 4502, subd. (f)); and to make choices about their own lives, including where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment and leisure, the pursuit of their personal future, and program planning and implementation. (Welf. & Inst. Code, § 4502, subd. (j)).

3. It is clear that the Lanterman Act is at its heart about empowering the developmentally disabled to live full, independent and productive lives. It is therefore not surprising that supported living arrangements are fully embraced as a means to achieve the Act's goals. Welfare and Institutions Code section 4689 provides:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan.

The section continues by enumerating principles that supported living arrangements must adhere to. These include that preferences concerning where and with whom the consumer lives be considered (Welf. & Inst. Code, § 4689, subd. (a)(3)); that the services or supports be flexible and tailored to the consumer's needs and preferences (Welf. & Inst. Code, § 4689, subd. (a)(6)); and that consumers not be excluded from supported living solely because of the nature and severity of their disabilities (Welf. & Inst. Code, § 4689, subd. (a)(8)).

In addition, the requirement that services be "effective" is mentioned throughout the statute. Cost considerations, however, are not mentioned in the provisions addressing supported living.

4. NBRC contends that its denial of Claimant's request to fund the IABA plan was correct due to cost constraints imposed by the Lanterman Act. NBRC represents that funding the IABA plan would violate title 17, California Code of Regulations, section 58617, which addresses the cost of supported living plans. This regulation provides that the annual cost "shall not exceed the total annual cost of regional center funded services and supports that would be provided if the consumer were served in an appropriate licensed residential

facility as identified through the IPP process.” NBRC interprets this regulation as mandating a type of “cost cap” for supported living services.

An administrative regulation, however, is a rule adopted by a state agency to implement, interpret, or clarify a law the agency enforces or administers. (Gov. Code, § 11342, subd. (b).) The regulation itself must be consistent with the enabling statute – not conflict with it – and be reasonably necessary to effectuate the statute’s goals. (Gov. Code, § 11342.2.) The rigid application of the formula set forth in section 58617 conflicts with the Lanterman Act, the regulations’ enabling statute, in several respects.

The Lanterman Act contemplates that services for each client will be selected and provided on an individual basis. This is accomplished through the IPP process, which is the mandated method of establishing goals and objectives for the consumer and identifying the supports and services necessary to accomplish those goals and objectives. If a service specified in a consumer’s IPP is not available through a generic resource, the regional center must fund the service in order to meet the goals of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.) It cannot rely on a fixed policy or rule as a basis for denial of services or supports necessary to meet IPP goals. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232.) This is true even if the fixed rule is based on a regulation. Thus, although regulation section 58617 may appropriately provide a guideline for determining the reasonable cost of a supported living arrangement, it cannot serve as an absolute bar to funding services necessary to meet the IPP goal of supported living. Such an application of the regulation would conflict with the underlying statute.

Another way that applying the cost cap violates Claimant’s rights is that the cost of her SLP is high due to the severity of her disability. By capping the amount it will pay, NBRC directly violates Claimant’s right, as specifically set forth in Welfare and Institutions Code section 4689, subdivision (a)(8), to not be excluded from supported living based solely on the severity of her disability.

In addition, NBRC did not first identify which facility type was appropriate to use through the IPP process. To the contrary, NBRC unilaterally made the choice – a 4i level residential facility – it used in making the calculations. Therefore, even if it was not violative of the statute, regulation section 58617 could not serve as the basis for calculating the maximum cost of an SLA for Claimant.

5. Secondly, NBRC cites the direction throughout the Lanterman Act that public funds be expended only in a cost-effective manner. There is no question that regional centers are required to purchase services in a cost-effective manner (See Welf. & Inst. Code § 4646, subd. (a) and § 4512, subd. (b)). But cost-effectiveness does not apply in these circumstances. The agreed-upon goal for Claimant is a supported living arrangement. Thus, it would be appropriate, and even required, to factor in cost-effectiveness when comparing two or more supported living programs. In this case, there has been an extensive and lengthy

search, but nonetheless, only one plan has been found. It appears expensive. But it cannot logically be found to not be cost-effective.

6. NBRC further objects to the IABA plan on the grounds that NBRC was not involved in its construction. The relevancy of this argument to the ultimate issue is unclear, even if there was a factual basis for the argument. Supported living as the goal for Claimant was the product of an IPP process undertaken by all concerned. Dr. LaVigna has been involved in Claimant's life for many years and IABA has provided services previously – services that were paid for by NBRC. Claimant's parents advised Rhonda Vought that IABA was working on a plan. All concerned searched extensively for a plan and provider, and, after years of searching, IABA emerged as the only viable option. Moreover, any claim that NBRC had insufficient notice and/or time to consider the IABA proposed SLP prior to Claimant's October, 2003, IPP meeting has been made moot by the passage of time.

7. Finally, NBRC contends that implementation of the IABA plan would violate the Lanterman Act's requirement that persons be served in the least restrictive environment because Claimant would initially be accompanied 24 hours per day. It is true that the Lanterman Act contains the right to receive services in the "least restrictive environment." The Act modifies this right, however, as follows: "Such services . . . shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports." (Welf & Inst. Code § 4503, subd. (a).) NBRC presented no evidence that the IABA plan would violate this precept. To the contrary, it was demonstrated that the services, and restrictions, contained in the IABA plan are necessary at this point in time to support and integrate Claimant safely into the community — as opposed to an institutional setting, traditionally considered to be the most restrictive.

8. NBRC's basis for noticing the termination of the self-determination plan is less clear. Apparently, concerns arose that Claimant's parents were not complying with the portions of the agreement that call for the presentation of goals and were billing NBRC inappropriately. At hearing, much time was spent questioning Claimant's mother on the inclusion of meals, coffee and other specific items, in the requests for reimbursement. But NBRC always paid the reimbursement requests. The self-determination plan was clearly a second choice when a suitable alternative (initially a residential school placement) could not be found. It was not meant as a long-term plan. And there was no evidence that the plan has not been successful. Accordingly, it is reasonable to continue the self-determination plan until a new plan is in place. It is also reasonable, however, to require both sides to adhere to the original agreement. Hence, a meeting must be convened as soon as possible to discuss and clarify the responsibilities of both sides in the continuation of the self-determination plan, including what expenditures fall within it.

9. The Lanterman Act clearly requires services and supports that enable persons with developmental disabilities to approximate as best they can the pattern of life available to people of the same age who are not disabled. Further, the services and supports include those necessary to allow them to live in their own homes when this objective is a part of their individual program plans. In this matter, it was shown that the IABA plan would meet

Claimant's needs and goals. The only real issue is cost, and there is no legal basis for denying this service to Claimant based upon its cost. On the contrary, the law supports the provision of the IABA plan to Claimant.

Claimant has waited approximately three years for a supported living arrangement. There is no reason to believe that a less costly plan can be found that will meet her needs. For all of the above-stated reasons, Claimant's request that NBRC be required to fund the IABA plan will be granted.

#### ORDER

1. Claimant Katherine T.'s appeal is granted. NBRC is required to fund the IABA supported living plan dated November 3, 2003.

2. The self-determination plan agreement shall remain in effect pending implementation of the IABA plan, provided, however, that both parties comply with all of the terms and conditions set forth in the agreement.

3. An interdisciplinary team meeting shall be convened forthwith. The team shall implement the IABA plan and clarify the rights and responsibilities of each party under the self-determination plan.

DATED: \_\_\_\_\_

---

MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal to a court of competent jurisdiction within 90 days.